

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 15843 of
Melvin K., Carrie R., and Gary W. Maish
(by assignment) to appropriate from
Rapp Creek in Nevada County

ADOPTED JUN 2 - '59
Decision No. D 934

Substance of the Application

Application 15843, filed on April 21, 1954, with the former Division of Water Resources, is for a permit to appropriate 0.38 cubic foot per second (cfs) by direct diversion between April 1 and October 15 of each year from Rapp Creek tributary to South Yuba River via Kentucky Ravine for irrigation purposes. The water is to be diverted at a point within the NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 4, T16N, R7E, MDB&M* and used on 15 acres within the SW $\frac{1}{4}$ of NE $\frac{1}{4}$, 10 acres within the SE $\frac{1}{4}$ of NE $\frac{1}{4}$ and 5 acres within the NE $\frac{1}{4}$ of SE $\frac{1}{4}$ all in Section 4, T16N, R7E.

Protest

Pacific Gas and Electric Company objects to approval of the application on the ground that any diversion thereunder will diminish the flow of Yuba River from which the Company is authorized to divert under Permit 5775 (Application 8794) as follows:

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*Hereinafter all township references are from Mount Diablo Base and Meridian (MDB&M).

"The right to divert to storage 67,000 acre-feet from the Yuba River at Narrows Reservoir* during the period from January 1 to December 31 of each year and divert such storage into the Narrows Tunnel for power use at Narrows Power House, and the right to divert 700 cubic feet per second of natural and/or augmented flow during the period from January 1 to December 31 of each year into the Narrows Tunnel for power use at Narrows Power House under Application 8794, Permit 5775, with priority of September 21, 1936."

The protestant alleges that all water diverted by it is used for generation of electricity sold to the public and that any diminution of the flows of Yuba River would be against the public interest.

Answer

The original applicant (Charles N. White) claimed, in answer to protest, that water from Rapp Creek has been used on the property in question since the 1800's; that the amount applied for under the application will not have any effect on the protestant's water supply; that part of the flow of Rapp Creek originates from springs on the property; and that all of the water applied for will be used for irrigation and will return to the natural channel.

Proceedings in Lieu of Hearing

The original applicant and protestant stipulated to the proceedings in lieu of hearing as provided for by Section 737 of the Board's rules; and a field investigation was conducted on January 4, 1956, by J. Victor Scammon, an engineer of the former Division of Water Resources (now with the Board). The applicants and protestant were present or represented at the investigation. Subsequently, on June 6, 1958, the application was assigned to the present holder thereof.

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* Name changed to Englebright Reservoir in 1953 according to USGS Water Supply Papers.

Records Relied Upon

The records relied upon in support of this decision are Applications 8794 and 15843 and all relevant information on file therewith, with particular reference to "Report of Field Investigation on Application 15843", dated December 23, 1958; United States Geological Survey, French Corral, California, Oregon House, California, and Smartville, California, quadrangles, all 7.5-minute series dated 1950 (Smartville dated 1951); and United States Geological Survey, Water Supply Papers, Part 11, "Pacific Slope Basins in California", with particular reference to stream flow records in the Yuba River drainage system.

Source and Watershed

According to the French Corral Quadrangle, Rapp Creek (shown as Rapp Ravine on the quadrangle) heads in about four short ravines in the vicinity of Pleasant Valley within the eastern portion of Section 9, and the western portion of Section 10, T16N, R7E. The ravine flows in a general northerly direction approximately 1.5 miles to a junction with Kentucky Ravine which continues another 0.75 mile to a confluence with South Yuba River within the storage area of Englebright Reservoir. Englebright Dam is located approximately 7.25 stream miles downstream from the mouth of Kentucky Ravine on Yuba River. The Excelsior Ditch of Nevada Irrigation District traverses the watershed near the headwaters of Rapp Creek and upstream from the applicants' proposed point of diversion.

The drainage area above the point of diversion scales about one square mile ranging in elevation from a maximum of about 1,975 feet to about 825 feet.

Water Supply

The USGS Water Supply Papers contain records of the flow passing the Englebright Dam for the period October 1941 to September 1955. Table I shows the mean monthly flows passing the Englebright Dam and power plant during the season of diversion requested by the applicant.

TABLE I
Yuba River at Englebright Dam
(Mean Monthly Flow in cfs)

<u>Year</u>	<u>Apr.</u>	<u>May</u>	<u>June</u>	<u>July</u>	<u>Aug.</u>	<u>Sept.</u>	<u>Oct.</u>
1941							341
42	7413	7651	6017	1368	549	422	393
43	7078	4536	2546	734	470	507	633
44	2513	4112	1782	626	326	308	465
1945	3705	5423	2539	699	588	531	413
46	5249	5607	1861	740	578	480	382
47	3001	1531	970	457	442	394	452
48	6640	6422	4337	784	414	477	266
49	4894	4278	1254	467	376	283	239
1950	5972	6285	3044	756	449	468	424
51	4574	4967	1440	595	528	525	560
52	9459	13330	8674	2982	798	699	657
53	4820	5368	5993	1617	699	666	604
54	6109	3704	1228	715	654	371	231
1955	2190	4056	1693	702	632	259	
Total	73617	77270	43378	13242	7503	6390	6060
Mean	5258	5519	3098	946	536	456	433
Median	5072	5168	2200	708	538	482	418

Pacific Gas and Electric Company, pursuant to Permit 5775 (Application 8794), has the right to divert up to 700 cfs year-round of natural and/or augmented flow at Englebright Dam for power purposes. Considering only the season proposed for diversion by the applicants, it is apparent that water in excess of the protestant's requirements is available only during the months of April, May, June, and July, with deficiencies occurring during the August, September, and October.

Information Obtained from Field Investigation

The "Report of Field Investigation of Application 15843", dated December 23, 1958, indicates that the source of water in Rapp Creek during the irrigation season is (1) natural flow from springs along the creek channel, (2) return flow from irrigation, and (3) leakage and water purchased by the applicants from Nevada Irrigation District's Excelsior Ditch. It is further indicated in the report that the flow of Rapp Creek at the time of the investigation (about 3.0 cfs) was not indicative of conditions during the irrigation season due to heavy rains. However, the original applicant, Mr. White, advised the investigating engineer that the flow was usually sufficient to irrigate the greater portion of the place of use under the application.

It is also reported that the applicants own approximately 1,057 acres of steep hillside land through which Rapp Creek flows and that the land to be served under the application appears to be riparian to the Creek.

The applicants' proposed point of diversion is located upon the land of an upstream neighbor who, according to the

applicants, will grant access thereto. At the time of the investigation, there were no diversion works in place, but there was evidence of old ditches having been dug many years ago.

The applicants indicated that the reason for filing the application was to cover use of the foreign water in Rapp Creek which cannot be claimed under riparian right.

Representative for Pacific Gas and Electric Company at the investigation explained that although the amount sought is small, the accumulative total of many such applications and diversions would cause injury to the Company by reducing the quantity available for diversion at Englebright Reservoir.

Discussion

Requisite for a permit pursuant to Application 15843 is the existence of unappropriated water in the source (Water Code Section 1375d). Inasmuch as the flow of Rapp Creek contributes to the water supply of Pacific Gas and Electric Company at Englebright Dam on Yuba River, the only time water is available for appropriation under Application 15843 is during such time as flow passing the Company's point of diversion is in excess of its requirements under Permit 5775. It follows then that water is available for appropriation under Application 15843 only when more than 700 cfs are passing Englebright Dam.

From Table 1, it is apparent that water in excess of protestant's requirements exists, on the average, only during the months of April, May, June, and July. Discharges passing Englebright Dam have been less than 700 cfs during the months of

August, September, and October in every year for the period of record with the exception of August, 1952.

To the extent that a right to use water on the property in question exists by virtue of a riparian right or by continuous beneficial use beginning prior to December 19, 1914, the effective date of the Water Commission Act (now Water Code), such rights are not affected by this decision as it is a matter not properly within the jurisdiction of the Board and is not dependent upon issuance of a permit to the applicants.

Conclusion

Based upon the foregoing information, it is concluded and the Board finds that little or no unappropriated water normally exists in Rapp Creek during the months of August, September, and October, and that Application 15843 should be denied insofar as it seeks diversion during these months. For the remainder of the diversion season requested under the application, the Board finds that water is available in Rapp Creek for appropriation, and that during this period water may be taken and used in the manner proposed by the applicants without injury to downstream users.

ORDER

Application 15843 for a permit to appropriate unappropriated water having been filed with the former Division of Water Resources, a protest having been filed, stipulations to the proceedings in lieu of hearing having been submitted, an investigation having been held, jurisdiction of the administration of water rights including the subject application having been subsequently

transferred to the State Water Rights Board, and said Board having considered the available information and now being fully informed in the premises:

IT IS HEREBY ORDERED that Application 15843 be and the same is hereby approved in part and that a permit be issued to the applicants subject to vested rights and to the following terms and conditions, to wit:

1. The amount of water appropriated shall be limited to the amount which can be beneficially used and shall not exceed 0.38 cubic foot per second by direct diversion to be diverted from about April 1 to about July 31 of each year.

The equivalent of such continuous flow allowance for any thirty-day period may be diverted in a shorter time if there be no interference with vested rights.

2. The maximum amount herein stated may be reduced in the license if investigation so warrants.

3. Actual construction work shall begin on or before December 1, 1959, and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

4. Said construction work shall be completed on or before December 1, 1961.

5. Complete application of the water to the proposed use shall be made on or before December 1, 1962.

6. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Rights Board until license is issued.

7. All rights and privileges under this permit including method of diversion, method of use and quantity of water diverted are subject to the continuing authority of the State Water Rights Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

Insofar as Application 15843 seeks direct diversion between about August 1 and about October 15 of each year, the same is hereby denied.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at _____, California, on this ____ day of _____, 1959.

Henry Holsinger, Chairman

W. P. Rowe, Member

Ralph J. McGill, Member